

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8363 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RATHOR G PREMCHAND

Versus

STATE OF GUJARAT

Appearance:

MR DF AMIN for Petitioner
MR RC KODEKAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 31/03/2000

ORAL JUDGEMENT

Heard learned counsel Mr. D.F.Amin for the petitioner and learned AGP Mr. R.C.Kodekar for the Respondents.

By means of present petition under Article 226 of the Constitution of India, the petitioner has prayed to

quash and set aside the letter dated 7.7.1988 (Annex.D) issued by Respondent no.2, for the reasons enumerated in the petition. According to the petitioner, at the relevant time, he was a student of Government Polytechnic, Dahod and was studying in 6th Semester of Diploma in Civil Engineering (Part-time) (to be referred as DCE for short). The petitioner was held guilty for indulging in malpractice during the examinations of the Academic Year 1987-88. It transpires from the averments made by the petitioner that the petitioner appeared vice his younger brother who was also a student of the very same Government Polytechnic, in the examination of 1st Semester of Diploma in Mechanical Engineering (Part-time) (to be referred to as DME for short). The petitioner appeared in the said examination for his brother and was caught by the Supervisor and both the petitioner and his brother were served with show cause notice as to why they should not be punished for the malpractice practiced by them. Ultimately, the petitioner came to be punished vide communication dated 7.7.1998 (Annex.D) wherein the petitioner was intimated that the Board has decided to cancel the result of the current examination at which the petitioner had appeared and that the petitioner is debarred permanently, from appearing at any of the future examinations if he is above 21 years and for 10 years in case he is under 21 years. According to the petitioner, punishment imposed on the petitioner is very harsh and exorbitant. He, therefore, prayed to quash and set aside the impugned communication Annex.D.

During the course of submissions, Mr. D.F.Amin, learned counsel appearing for the petitioner has fairly conceded that the petitioner has not challenged the ultimate finding of the domestic tribunal holding him guilty for indulging into malpractice, but learned counsel Mr. Amin brought to the notice of this Court the fact that brother of the petitioner for whom the petitioner had appeared in the examination, had also not challenged ultimate finding and had accepted the punishment imposed on him by Respondent no.2 Board. He had discontinued the study. It is submitted by the petitioner that since he had passed out examinations up to five semesters and was about to complete his study, the nature of punishment imposed on him, is very harsh and exorbitant. Reading the language of the communication Annex. D and looking to the peculiar facts and circumstances of the case, I am of the view that punishment inflicted on the petitioner is very harsh and exorbitant and normally, educational institutions like the State Examination Board should not impose such a harsh penalty using the language in the communication Annex.D as referred to above, debarring permanently the

petitioner from appearing in the examination. According to the petitioner, as he was more than 21 years of age, resultant effect of the impugned communication Annex.D would be that petitioner is debarred permanently from appearing in the any examination. Said communication does not indicate about the age of the petitioner-student. Communication also indicates that in all 27 students were punished by Respondent no.2 Board who were found guilty of indulging into malpractice in the examinations held in the month of March, April & May-1988. Said communication also reveals that the petitioner was the only student who was impliedly debarred from appearing in the examinations permanently. We are not concerned with the case of the other students who were imposed lesser punishment. Learned AGP Mr. Kodekar has also fairly conceded that the punishment imposed on the petitioner is very harsh and exorbitant and since the petitioner has not challenged the ultimate finding, punishment should be reduced to the extent that he should be permitted to appear, if he so desires, in the examinations to be held on and from next academic year. He further submitted that the Court should, without interfering ultimate finding, interfere with the quantum of punishment.

In view of the facts and circumstances of the case and fair stand taken by learned AGP Mr. Kodekar and in view of the fact that petitioner has not challenged the ultimate finding, in my view, this is a fit case where this Court should interfere with the quantum of punishment, more particularly when the young brother of the petitioner for whom petitioner appeared in the examination, has also accepted the finding and left the study. Hence, the punishment imposed on the petitioner debarring him permanently from appearing in the examination requires to be reduced and petitioner should be permitted to appear in the examination of 6th Semester of DCE and onwards. It is pertinent to note that incident in question was of July 1988 and more than 12 years have passed. Hence, if petitioner is permitted to appear in the examination of 6th Semester of DCE, interests of justice would be met. As stated earlier, learned counsel for the petitioner, though averred in the petition, has not challenged the ultimate finding holding the petitioner guilty, is also a relevant aspect warranting reduction in punishment. It transpires that due to the wrong and adamant stand taken by the petitioner before Respondent no.2 Board by way of sheer denial, perhaps therefore this harsh punishment might have been imposed, viewing the same seriously. Educational Institutions should view such lapses seriously, but at the same time, should take into

consideration the fact that one can improve after passage of time and also take into consideration career of a student on which whole life of the student rests.

For the reasons aforesaid, petition is partly allowed. The impugned communication dated 7.7.1988 is quashed and set aside to the extent of quantum of punishment imposed without disturbing ultimate finding of holding petitioner guilty of indulging in malpractice in the examination in question. Punishment debarring the petitioner from appearing in the examination permanently is quashed and set aside and reduced to the extent that petitioner is debarred from appearing in examination for a period of 10 years from the date of 1st Examination and petitioner is permitted to appear in the examination of 6th Semester of DCE (Part-time), if he so desires, from the next Academic Year onwards. Respondents are directed to permit the petitioner to appear in the examination of 6th Semester of DCE (Part-time) in the next academic year onwards from the very same Government Polytechnic, Dahod or from any other Govt. Polytechnic approved by the Respondent No.2 Board.

Rule is made absolute to the above extent. In the facts and circumstances of the case, no order as to costs.

Direct Service is permitted.

31.3.2000 [C.K. BUCH, J]

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